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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,594	05/15/2006	Stephen William Sankey	DTG1-126US	1832
31344	7590	12/29/2009	EXAMINER	
RATNERPRESTIA P.O. BOX 1596 WILMINGTON, DE 19899				WATKINS III, WILLIAM P
ART UNIT		PAPER NUMBER		
				1794
MAIL DATE		DELIVERY MODE		
12/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/564,594	SANKEY ET AL.	
	Examiner	Art Unit	
	William P. Watkins III	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 September 2009.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 21-27 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/28/2009</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. The declaration filed 24 September 2009 is accepted.
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Isakson et al. (U.S. 4,640,838) in view of Dyke (U.S. 4,515,841).

Isakson teaches a vent opening that is covered by a tape that has a layer that is weakened by heating during microwave cooking of food (Figure 4, Example 1). Dyke teaches the use of either a polymer that softens when it is heated or a water soluble polymer such as polyvinyl alcohol that absorbs steam and expands and dissolves to form an opening when a water containing substance is heated in a package (abstract). The instant invention claims a water soluble barrier layer over an opening in a thermal sealed package with a vent hole that is covered by a barrier of a water soluble material. It would have been obvious to one of ordinary skill in the art to have used a water soluble instead of a heat sensitive barrier layer in Isakson et al. because Dyke teaches these as alternate substitutes in the bag venting art when the contents of the package

or the environment in which it is processed contain water. Variation in the thickness of the soluble layer and variation in the selection of bag substrate and soluble barrier materials is taken as being within the ordinary skill of the art depending on the strength of the seal desired and the desired opening temperatures and pressures, absent unexpected results.

4. Applicant's arguments with respect to claims 1-20 filed 24 September 2009 have been considered but have not been found to be persuasive.

Applicant argues that Isakson et al. requires both the heat sensitive deposit and the outer layer be of impermeable materials that can only function by softening of the heat deposit from direct action of microwave energy on particles that absorb it in the deposit or the overall function of Isakson et al will be rendered inoperable. The examiner disagrees. It would be possible to substitute a water soluble polymer such as the PVA taught by Dyke that has adhesive properties for element 24 of Figure 4 of Isakson et al. and still have outer layer 22 be made of an impermeable material. The water soluble adhesive would be weakened by water vapor evaporated from the contents of the package (water is the main microwave absorber in most food products). Once it is weakened, pressure from the inside of the container would displace the impermeable outer barrier layer, thus venting the package and preserving the basic function of the package.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/564,594
Art Unit: 1794

Page 5

WW/ww
December 30, 2009

/William P. Watkins III/
Primary Examiner, Art Unit 1794